

## Wikileaks: Lessons for Press Policy & Regulation



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WikiLeaks has achieved the publication of the biggest leak of confidential information in journalism history. The Afghan, Iraq, and Diplomatic cable disclosures were on an unprecedented scale and extent. While the information they contained was not of the highest security classification it did provide the evidence for an extensive, varied and detailed critique of American military actions and foreign policy. Putting aside discussion of their actual political impact, it is fair to say that the leaks were a significant media challenge to the American authorities. The hostile response on the part of governments and corporations to WikiLeaks has implications for press policy and regulation.

WikiLeaks was also a challenge to mainstream journalism. Many media organisations also attacked WikiLeaks. Yet despite publishing what appears to be illegally obtained material that has jeopardised the information security of governments around the world it has managed to avoid the usual legal, political and commercial restrictions. It appears to be immune from the normal sanctions and limitations imposed on mainstream media. This alone would pose interesting press policy and regulation questions. The fact that WikiLeaks published most of this material in collaboration with mainstream news organisations makes those questions even more interesting.

Yet while WikiLeaks does raise interesting problems in terms of the rights and responsibilities of journalism in the Internet era, it might also be a transitory phenomenon that is unsustainable and not replicable to any significant level. It may simply have been a one-off network exploit. Even then, it is possible to argue that, more important than its own continued existence, what WikiLeaks signifies about journalism and political communications in the digital age may raise broader questions for press policy and regulation in the networked era.

### What Was New About WikiLeaks?

The philosophy behind WikiLeaks was a mixture of 'hactivism' and traditional radical or alternative journalism, but there is nothing fundamentally new about leaks or anti-hegemonic political journalism. These have been staples of journalism throughout its history. The novelty of WikiLeaks was threefold:

1. The scale of publication through the Internet
2. The collaboration of outsider source with mainstream platform
3. The immunity of a trans-national media entity

It could be argued that the first is a question of degree and the second is an adaptive rather than revolutionary step. However, the immunity does appear to be novel, at least in the context of such a major act of journalism. All three elements have potential implications for regulation and wider media policy.

#### 1. The scale of publication through the Internet

The volume of the 2010 leaks was astounding. WikiLeaks was handed 91,000 military records from Afghanistan; 391,000 records from Iraq; and more than 250,000 confidential diplomatic dispatches. Each of those caches of information in its own right would be the largest leak of classified material in history. Just a handful of them would have been the basis for a normal front page scoop. Collectively, they formed an almost unimaginably large security breach. It was not intended to publish all of them at once, so this was not a 'data dump'. However, it would simply have been impossible to pass on and then process so much information without the Internet and the associated information processing technologies, not to mention the increased pace at which the material was able to spread.

The implication is that it becomes much harder for the authorities to restrict the release of data. Certainly, once it escapes, the material is effectively out of their control. The cost of accepting and publishing the leak for WikiLeaks was minimal. Publication at scale was instantaneous and global. WikiLeaks supporters and readers actively disseminated the material as well as linking to it. Republishing it by readers was virtually cost-free. It is much harder for authorities to censor or even monitor the many channels on the Internet. This is part of the immunity question, but it is also about the speed at which such a large amount of information can be spread.

## **2. The collaboration of source with mainstream platform**

The traditional model for leaks in the past had been a highly selective process controlled strictly by the gatekeeper journalist. With the 2010 stories WikiLeaks worked with mainstream journalists in a tense, but highly effective publication process. It meant that the material was sifted, contextualised and packaged for platforms with large, literate and attentive audiences made up of influential citizens. Gaining access to major media brands leveraged the stories into the wider global mass media as organisations such as the BBC amplified the coverage. Julian Assange described this as a 'tactical' alliance and he insisted that it did not compromise WikiLeaks larger goals of disrupting power (political and media). In that sense, he was confirming the critique of many mainstream journalists, that he and WikiLeaks are prepared to work with some mainstream journalists but do not accept the codes, ethics and limits that shape the rights and responsibilities of traditional liberal journalism. WikiLeaks was prepared to take risks.

Assange was clearly less concerned about the physical safety of those referred to in the material. He was also generally unconcerned about the consequences the releases would have, for example, on beneficial aspects of secret diplomacy such as kidnap releases or conflict resolution negotiations. He did not have to worry about safeguarding an institution with a board, shareholders or employees. He was unaccountable.

The debate about the actual impact of the leaks is irrelevant in this discussion: the point is that WikiLeaks did not have these concerns, while their mainstream media partners did. So, for example, the New York Times was in communication with the State Department about general aspects of the material it was handling. Even the Guardian in the UK had limited contact with the US administration. These contacts were informal but are typical of the unofficial relationships that mainstream media has with authority. It is one of the many lines of communication kept open between the Fourth Estate and Government as part of the complex set of both hostile and mutually supportive relationships between the two. These are founded on a legal framework of media law and regulation as well as fiscal and other rules and regulations. But the cultural/political relationship is also important as the whole point of a 'free' press in a liberal democracy is that its operations are not overly governed by statute and regulations. WikiLeaks did not have these concerns and, indeed, rejected them as complicity in the abuse of power by those authorities.

WikiLeaks at this time was a Network Exploit. It took advantage of the special nature of the Internet networks to provide it with immunity, scale, reach, and cheapness. It was also exploiting the network of mainstream media for its skills and its power to connect the public to stories. This is typical of

Hybrid Media – a mixture of diverse individuals and organisations – often working on the margins as well as the mainstream – with a variety of formats and through diverse flows of information that can be both organized and arbitrary. You can see this kind of hybridity playing out in the case of WikiLeaks as the data it releases passes through networks to appear in everything from a complex interactive graphic on the New York Times website to a tweet from a WikiLeaks supporter.

Part of that hybridity remains within the conventional journalism framework of policy and regulation. However, what is outside of it will be increasingly exploited by mainstream media effectively compromising their own position. Another case would be how The Guardian got around the Trafigura ‘super-injunction’ when the material was made widely available through the Internet on websites linked to via social media networks such as Twitter. At the moment this is largely an exceptional phenomenon. Mainstream Media may be increasingly ‘networked,’ but it still works largely through the usual channels.

However, it seems that advocacy groups, campaigners, lobbyists, or simply individuals do now have the power to follow in WikiLeaks footsteps, even if they do not use WikiLeaks itself. Networked journalists will become increasingly adept at mining these sources and those sources will themselves become more adept at disintermediated networking. WikiLeaks collaborated with mainstream media because it needed their resources and audiences to achieve the global high profile impact that Assange sought. However, the logic of the current evolution of (especially investigative) journalism (constrained by resource problems and increasingly technologically adept) is mainstream media will become the curator, connector and therefore agent for these ‘other’ ‘non-journalistic’ bodies. It is possible that NGOs, companies, lobby groups, councils, unions, etc. will increasingly trade information directly (voluntarily and unwillingly) with platforms like WikiLeaks. In this context, it can be seen that the negative and often dismissive attitude held by many in mainstream media to WikiLeaks is self-defeating. WikiLeaks and other ‘outsider’ and ‘non-journalistic’ organisations are going to be an increasingly important part of the news information ecology and any effective mainstream media organisation should pay it much more attention and be much more networked into it.

This has implications for a whole range of journalism policy issues. At its core is the challenge to ideas of objectivity and balance. It is far too early in the process to judge how extensive this reformation will be or how serious a challenge it is to current norms. It is still very early but the lack of successful imitators of WikiLeaks so far, for example, suggests that the structural realignment of journalism production is more incremental than revolutionary. However, the direction of travel is clear as we move into a period of even greater uncertainty and complexity for journalism as an industry and a practice.

### **3. The immunity of a trans-national media entity**

In the case of the 2010 WikiLeaks’ collaborations the mainstream media organisations took responsibility and justified the act of accepting illegally-obtained material with the public interest defence. A Federal Grand Jury is still considering what actions might be taken against WikiLeaks over the leaks but it does not appear at all likely to act against the New York Times. Julian Assange is facing personal legal actions by the Swedish legal system that he claims might make him vulnerable to American extradition proceedings but it seems highly unlikely that he will face a charge related to the leaks and even less likely that one might stick.

In the first instance WikiLeaks had a technologically-based immunity. Its source protection software systems meant that technically there was no link between its platform and the leaker. In the case of the alleged whistle-blower Bradley Manning it appears that if he was the leaker, he revealed himself.

WikiLeaks was also immune from the consequences of direct action against the servers for its website. This was partly because it had servers in different countries. The information was mirrored

on other hard-drives across the world controlled by supporters and mainstream media collaborators. As WikiLeaks discovered in autumn 2011 this system was not fool-proof. By distributing the information and allowing various people passwords it made itself vulnerable. One paradox of the WikiLeaks story is that it exploited the vulnerability of large, complex digital information systems, but it suffered a similar fate.

Organisations that have sought to replicate the WikiLeaks system have struggled to come up with a watertight system for encryption. Technically it is much harder to achieve on a continuous basis, especially when those systems are subject to DOS assault and the threat of hacking. Again the paradox of the WikiLeaks system is that a 'hacktivist' enterprise is vulnerable to its own tools. Governments are now spending vast amounts of money on Internet security. Not just to make their own systems more secure, but also to develop techniques for breaking into others. Small radical publishers can not compete with that investment though they can exploit the wisdom of the hacktivist crowd. They can, like WikiLeaks, be effective enough at producing significant disruption. They have not managed to institutionalise that process at scale over time but that might be the nature of this kind of radical intervention. It might be transitory and hybrid rather than sustainable.

The open Internet that made WikiLeaks possible and that gave it that degree of immunity was also helping American foreign policy objectives. The State Department's 21st Century Statecraft programme involves spending billions of dollars on promoting the transfer of skills and technologies to democracy activists and movements in authoritarian regimes. Many people have pointed out the policy contradiction here between an administration that sought to restrict WikiLeaks, but that also campaigns for Internet freedom for people in other countries. Fewer people have noticed that the State Department has **recognised** this tension, too.

## WikiLeaks and the Open Internet

There is a battle for the Open Internet and the struggle is taking place within governments as well as between the authorities and activists or citizens.

As Morozov has detailed, governments can use the same technologies to repress freedoms. However, as Timothy Wu has pointed out, future regulation online may be determined by corporate priorities as much as governments'. So we have the current situation where congress is debating a bill to force ISPs to enforce copyright control online to protect commercial interests. The effect of passing that law may well be to set a precedent and create a process whereby other restrictions can be enforced. History tells us that authorities tend to favour control.

The Internet gives us the potential for much greater transparency. However, even where that is achieved (for example through putting government data online) it does not necessarily translate into accountability let alone democracy (let alone progressive politics). Julian Assange expected direct political impacts from the work of WikiLeaks. It was a misunderstanding of the real complex relationship of communications and power, especially in a networked world.

WikiLeaks shows us that we are in an age of great uncertainty for media. Events like the so-called Arab Spring suggest that the growth of social networks combined with new mainstream media players such as Al Jazeera may be more important for political communications than individual hybrid media enterprises like WikiLeaks.

WikiLeaks was novel in some respects but perhaps its real significance is as a symptom of other changes and dynamics. That's why it's important to analyse in a detailed and objective way the dynamics of these interactions between 'new' media enterprises such as WikiLeaks and mainstream media. Outcomes will be shaped not by inevitable technological determinism but by editorial choices, strategic and specific, working within wide regulatory and media policy frameworks.

So what are the policy implications from the perspective of creating sustainable journalism that is responsible and that has the capacity to provide a public forum that is critical, open and holds power to account? Put crudely, it is that in the digital era there has to be an acceptance that there is an unregulated and regulated news media. The advantages of allowing that space are too great in terms of freedom, the costs relatively low in terms of harm to individuals or beneficial systems. The real threat is greater secrecy and manipulation of information, not irresponsible disclosures. A responsible news media has nothing to fear from these 'wild zones'. Yes, the unregulated Internet is very popular and attracts attention. Yes, it can pollute the public sphere with false or dangerous information. However, paradoxically, this makes the regulated and responsible sector even more valuable to citizens who want verifiable and accountable news platforms. Even Julian Assange recognized that, which is why he chose to work with it. Mainstream media must adapt and embrace these new networks, but like good, open governments, it should have nothing to fear.

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